MT LEGISLATIVE HISTORY

Chapter 191 1977

Bill H ____ S 73 Original bill & hist. ___C

H. Committee on Business & Industry		S. Committee on Business & Industry	
Hearing Date(s) Mar 09	✓C	Hearing Date(s) Jan 18	✓C
_____	___C	Jan 25	✓C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Mar 09	✓C	Jan 25	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Senate BILL NO. 73

INTRODUCED BY _____

BY REQUEST OF THE DEPARTMENT OF BUSINESS REGULATION

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL REVISION OF LAWS RELATING TO A THREE-DAY COOLING OFF PERIOD ON DOOR-TO-DOOR SALES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-501, R.C.M. 1947, is amended to read as follows:

"85-501. Purpose. The purpose of this act is to afford consumers, subjected to high pressure ~~door-to-door~~ personal solicitation sales tactics, a "cooling-off" period."

Section 2. There is a new R.C.M. section numbered 85-502.1 that reads as follows:

85-502.1 Definitions. As used in this act the following definitions apply:

(1) "Buyer" means anyone who gives a consideration for the purchase or use of goods or services.

(2) "Personal solicitation" means any attempt by a seller who regularly engages in transactions of the same kind to sell goods or services which are primarily for personal, family, or household purposes, when either the seller or a person acting for him contacts the buyer by telephone or in person other than at the place of business of the seller, except:

(a) an attempted sale in which the buyer personally knows the identity of the seller, the name of the business, firm, or organization he represents and the identity or kinds of goods or services offered for sale;

(b) an attempted sale in which the buyer has initiated the contact with the seller; or

(c) an attempted sale of a newspaper subscription in which the seller is a minor child engaged in both the delivery and the sale of the newspaper.

(3) "Personal solicitation sale" means the purchase, lease, or rental of any goods or services following a personal solicitation by the seller or a person acting for him, provided the buyer is required to give consideration in excess of $25 in cash or credit therefor

(4) "Seller" means a lessor, renter, or anyone offering goods or services for consideration, including assigness of a seller.

Section 3. There is a new R.C.M. section numbered 85-502.2 that reads as follows:

85-502.2. Disclosure obligation. Before any personal solicitation each seller shall, at the time of initial contact or communication with the potential buyer, clearly and expressly disclose the individual seller's name, the

name of the business, firm, or organization he represents, the indentity or kinds of goods or services he wishes to demonstrate or sell, and that he wishes to demonstrate or sell the identified goods or services. When the initial contact is made in person, the seller shall also show the potential buyer an identification card which clearly states the seller's name and the name of the business or organization he represents. The disclosures required by this section shall be made before asking any questions or making any statements except an initial greeting. Nonprofit organizations are exempt from the requirements of this section.

Section 4. Section 85-503, R.C.M. 1947, is amended to read as follows:

"85-503. Buyer's right to cancel ~~home~~ personal solicitation sale -- time allowed -- notice -- return of goods. (1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, the buyer or any other person obligated for any part of the purchase price may cancel a ~~home~~ personal solicitation sale until midnight of the third business day after the day on which the buyer has signed an agreement or offer to purchase relating to such sale~~.~~, provided that in the case of a personal solicitation sale made by telephone, the buyer may cancel at any time prior to his signing of an agreement or

offer to purchase relating to such sale.

(2) Cancellation occurs when written notice of cancellation is given to the seller.

(3) Notice of cancellation, if given by mail, ~~shall be deemed~~ is considered given when deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation need not take the form prescribed and shall be sufficient if it indicates the intention of the buyer not to be bound.

(5) A ~~home~~ personal solicitation sale may not be canceled if, in the case of goods, the goods cannot be returned to the seller in substantially the same condition as when received by the buyer."

Section 5. Section 85-504, R.C.M. 1947, is amended to read as follows:

"85-504. Notice to buyer of right to cancel -- form and contents -- notice of cancellation. (1) The seller shall furnish the buyer a notice which ~~shall contain~~ contains the statement set forth in ~~paragraph~~ subsection (a) or a statement as prescribed by federal trade commission rule governing door-to-door sales, and printed in capital and ~~lower case~~ lowercase letters of not less than ~~twelve (12)~~ 10-point ~~bold faced~~ boldfaced type with the seller's name and business address and the statement set forth in ~~paragraph~~ subsection (b)~~:~~

(a) YOU MAY CANCEL THIS SALE WITHIN THREE BUSINESS DAYS.

If you decide within ~~three~~ 3 days that you want to cancel the sale, tear off and mail the bottom of this card. To cancel, the card must be mailed BY CERTIFIED MAIL within ~~three~~ 3 days after you sign the contract.

(date)

(b) CONTRACT ~~SIGNED~~ CANCELED

I hereby cancel this sale.

(Buyer's signature)

(2) Until the seller has complied with this section the buyer or any other person obligated for any part of the purchase price may cancel the ~~home~~ personal solicitation sale by notifying the seller in any manner and by any means of his intention to cancel; provided, however, that failure to mail the cancellation by certified mail does not nullify the cancellation as long as the cancellation is mailed within the prescribed time period. The period prescribed by ~~section~~ 3 ~~[85-503]~~ 85-503 shall begin to run from the time the seller complies with this section."

Section 6. Section 85-505, R.C.M. 1947, is amended to read as follows:

"85-505. Repayment to buyer canceling -- liability for failure to repay -- retention of goods by buyer. (1) Except as provided in this section, within ~~ten (10)~~ days after a

~~home~~ personal solicitation sale has been canceled or an offer to purchase revoked, the seller shall tender to the buyer any payments made by the buyer and any note of other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) If the seller refuses within the period prescribed by subsection (1) to return the cash down payment or goods tendered as down payment, he shall be liable to the buyer for the entire down payment, and if the buyer is successful in his action therefor the court shall also award him ~~one hundred dollars ($100)~~ plus reasonable attorneys' fees and costs.

(4) Until the seller has complied with this section the buyer may retain possession of goods delivered to him by the seller and shall have a lien on the goods in his possession or control for any recovery to which he may be entitled."

Section 7. Section 85-506, R.C.M. 1947, is amended to read as follows:

"85-506. Redelivery of goods -- care of goods by

buyer. (1) Except as provided by ~~subsection (4) of section 5 [85-505]~~ 85-505(4), within a reasonable time after a ~~home~~ personal solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale but need not tender at any place other than his residence. If the seller fails to demand possession of such goods within a reasonable time after cancellation or revocation, the goods shall become the property of the buyer without obligation to pay for them. For the purpose of this section, ~~forty (40)~~ days shall be presumed to be a reasonable time.

(2) The buyer shall take reasonable care of the goods in his possession both before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk and such goods must be returned in substantially the same condition as received."

Section 8. There is a new R.C.M. section numbered 85-507 that reads as follows:

85-507. Violation. Except where inconsistent with the provisions of this act, a violation of this act is a violation of the Montana Unfair Trade Practices and Consumer Protection Act of 1973.

Section 9. Repealer. Section 85-502, R.C.M. 1947, is

repealed.

-End-

There being no further proponents or opponents to Senate Bill 36, Chairman Hazelbaker asked Senator Devine to close. Senator Devine stated if you want to be a responsible wholesaler you would take care of your tavern owners. He thinks the lack of public relations in his business is the part that really concerns him.

Senator Regan stated that Senator Devine defined this bill as a good public relations bill. Actually, she thought it was a form of competition and advertising. She thought if someone opened a hospitality room, then their competition would have to open one too.

Senator Goodover asked if there were any other states that have had any experiences like this. Mr. Doughtery stated they do have hospitality rooms in Colorado. Senator Devine stated a lot of states have wine, but he thought beer was restricted.

The Hearing on Senate Bill 36 was closed.

Senate Bill 73. "An Act For The General Revision Of Laws Relating To A Three-Day Cooling Off Period On Door-To-Door Sales."

Chairman Hazelbaker introduced Senator Pat Regan, Chief Sponsor, of Senate Bill 73. Senator Regan stated she was asked to sponsor this because the Department of Consumer Affairs is having difficulty. She then went through the bill stating her changes, such as page 1, section 1, lines 13 and 14 door to door was changed to personal solicitations. Personal solicitations is then defined on line 21. However, there are some exclusions that will protect the legitimate businessman. These exclusions were listed. Senator Regan stated the purpose of the bill is to shut down the operations from a telephone booth which we have had difficulty with in Montana. The person calling you would have to state he is calling because he has something to sell. He would not be able to open with the words -- Congratulations, you have won! This bill also ties in the three-day cooling off period on door to door sales.

Mr. Dick Disney, Department of Business Regulations and Consumer Affairs stated that he has found that a lot of organizations that were sending door to door salesmen have come down to long distance telephone solicitation. He feels there is a need for this additional statute concerning this law in regard to telephone solicitations. He stated Mr. Wood from his staff would answer any questions.

Russ Livergood, representing Montana Retail Association, testified in opposition to Senate Bill 73. His testimony is attached.

Chairman Hazelbaker then asked Senator Regan to close. Senator Regan referred to Section 6 of the bill. She stated this is the law now. They are only attempting to shut the door on door to door salesmen or someone intruding into your living room either by door to door people, TV, etc. She urged the Committee to give a Do Pass to this bill.

After some discussion Roger Tippy asked Mr. Wood about some amendments which he thought might be needed. The main amendment would be the title. Roger thought that the title was too short. Roger asked various other questions of which no amendments were made. However, Roger stated that he wanted the Committee to know that they had added a violation of the unfair trade practice act and they should be aware that they were giving

[illegible]ations.

The Hearing on Senate Bill 73 was closed. Chairman Hazelbaker stated these bills would be discussed at an early meeting.

Senate Bill 4. "An Act For The General Revision and Clarification Of Laws Relating To Trade And Commerce."

Senate Bill 4 was returned on second reading to the Committee of Business and Industry for further amendments. Chairman Hazelbaker read the new amendments submitted by Dave Cogley, Attorney for the Legislative Council. Senator Lowe moved that the amendments to the bill be approved. Senator Kolstad seconded. However, Senator Regan wanted to know exactly why these amendments were made so they will be held until Roger Tippy can contact Dave Cogley and find that information out for Senator Regan.

ADJOURN: There being no further business, Chairman Hazelbaker adjourned the meeting at 12:20.

FRANK W. HAZELBAKER, Chairman

MONTANA RETAIL ASSOCIATION

GRANITE BLOCK • P. O. BOX 440 • HELENA, MONTANA 59601
SERVING THE TOTAL INTERESTS OF MONTANA RETAILERS

AREA CODE 406
442-3388

SENATE BILL NO. 73

REVISING LAWS RELATING TO A 3-DAY COOLING OFF PERIOD ON DOOR-TO-DOOR SALES.

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Testimony before the Senate Business and Industry Committee

- - - - - - - - -

Mr. Chairman, Members of this Honorable Committee:

My name is Russ Livergood and I represent the Montana Retail Association. The Montana Retail Association is opposed to Senate Bill No. 73

Although the intent of Senate Bill 73 is not to impose restrictions on the established business community of Montana, in several areas this suggested revision does just that. When one reads the definitions of "buyer", "personal solicitation", "personal solicitation sale" and "seller," Senate Bill 73 becomes more general in nature and broader in scope than the title conveys.

Page 2, line 22 through page 3, line 4. Disclosure obligation requires that before any personal solicitation occurs that seller, at the time of initial contact or communication with the buyer shall clearly name the business and the identity or kinds of goods he wishes to sell. This requirement seems to be trying to place a type of formula on the manner in which a sale can be made and would be clumsy for a businessman to use.

Page 3, lines 4 through 10. When initial contact is made the seller also must show the buyer an I.D. card which is to contain the seller's name and the name of the business he represents. This practice would not only

be costly to the business community but would provide no protection to the customer. As you all know, I.D.'s can easily be falsified and obtained by nearly anyone with a desire to have a falsified I.D.

Page 3, line 23 through page 4, line 1. This section provides for consumation of purchases via the telephone. This proposed new language could very well involve sales made on approval. An example could be a home-town furniture store that delivers new living room furniture to a customer after a phone conversation in which a sale is made on approval. A customer receives the furniture and after several days has a party at which cigerette holes are burned in the furniture. The seller has no recourse against the buyer who can, after the party, return the damaged furniture to the seller with no obligation whatsoever.

This proposed revision could be compared to a one-way street. A one-way street for the buyer only. It provides the seller with nothing, and will, in effect, raise the cost of doing business which will in turn raise prices.

In order to conserve time I have listed the buyers'obligations and the sellers'obligations:

The buyer needs only to sign the contract and then to notify the seller that the order is to be cancelled. The seller must, in most disputed cases, not only deliver but pick up the merchandise at the buyer's convenience. The seller must make this pick up within 40 days (page 7, line 1-12) or ownership reverts to the buyer. If the buyer is not at home or takes an extended vacation the seller has no recourse after the termination of 40 days.

The seller must provide the forms for cancellation by the buyer (page 5, lines 1-10). The seller may be subject to a buyer's lien (page 6, lines 18-22), if the seller is not in compliance with Section 6. I question the validity of such a lien when in many cases a prior lien exists. Such as in the case of banks floor planning of furniture and appliances.

I am wondering, after reading this proposed revision and the existing statute, when my members who send catalogs to individual's homes, and place inserts in local papers, are they not in fact acting as door-to-door salespersons?

I thank this committee for its time and for extending the Montana Retail Association the opportunity to share its views.

by small union groups. When you look at the type of testimony we heard, the proponents of the bill were just ordinary citizens and she urged that the bill Do Pass.

Senator Devine stated that he thought there were more opponents than proponents to the bill. He stated that it was the third time he had heard it. Senator Regan stated it has gained greater and greater strength and thought its time had come. It has been passed in Oregon, Michigan and Vermont and in South Dakota with a delayed effective date. After some discussion, Senate Bill 69 was put to a vote. The vote ended in a tie. Senate Bill 69 will come out of committee with a Do Pass Without Recommendation.

SENATE BILL 73. "An Act For The General Revision Of Laws Relating To A Three-Day Cooling Off Period On Door-To-Door Sales."

Senator Regan stated that there would be an amendment to the title of the bill. She asked Roger Tippy to read the amendment. It is as follows:

> A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL REVISION OF LAWS RELATING TO A THREE-DAY COOLING OFF PERIOD ON DOOR-TO-DOOR SALES; AMENDING SECTIONS 85-501, AND 85-503 THROUGH 85-506, R.C.M. 1947; REPEALING SECTION 85-502, R.C.M. 1947."

Roger also stated that there were also a few misspellings and that the Secretary of the Senate could take care of these and they would not have to go on a Committee Report. Senator Regan moved the amendments. They were passed unanimously. Senator Regan then requested that SB 73, As Amended, Do Pass. After some discussion, Roger stated the intent of the Business and Industry Committee should be that the Department of Business Regulation does not need to make any rules under this bill, because it is clear enough that the Committee sees no intent to add any further recommendations. Senator Regan agreed. Senate Bill 73 was then voted on and As Amended, Do Pass.

ADJOURN: There being no further business, Chairman Hazelbaker adjourned the meeting at 11:45 a.m.

Hazelbaker

FRANK W. HAZELBAKER, CHAIRMAN

SENATE COMMITTEE Business & Industry

Date 1-25-77 Senate Bill No. 73 Time

NAME	YES	NO
Pat Regan, Vice Chairman	✓	
Allen Kolstad		✓
Pat Goodover		✓
Bill Lowe		✓
Jack Devine	✓	
Sandy Mehrens	✓	
Bob Peterson	✓	
Frank Hazelbaker, Chairman	✓	

Secretary

Chairman

Motion: that SB 73 be amended, DO PASS

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

January 25 19 77

MR. President

We, your committee on Business and Industry

having had under consideration SENATE Bill No. 73,

Respectfully report as follows: That SENATE Bill No. 73,

introduced bill, be amended as follows:

1. Amend title, line 7.
Following: "sales"
Strike: "."
Insert: "; AMENDING SECTIONS 85-501, AND 85-503 THROUGH 85-506, R.C.M. 1947; REPEALING SECTION 85-502, R.C.M. 1947."

AND AS SO AMENDED

DO PASS

FRANK W. HAZELBAKER, Chairman.

HOUSE BUSINESS AND INDUSTRY COMMITTEE

March 9, 1977

The meeting was called to order at 10:15 a.m. with all members present with the exception of Rep. Bradley, who was excused, and Reps. Fagg and Fabrega, who were absent.

Senate Bill No. 73 was discussed. Sen. Regan, sponsor, stated the bill was introduced upon request by the Department of Business Regulation. She gave a brief explanation of the bill. She also submitted an amendment to the committee at the request of the Insurance Commissioner.

Mr. Dick Disney stated there is a need to cover this area and the telephone solicitation. Ms. Jo Driscoll stated that the three-day cooling off period is insufficient. The Insurance Commissioner does not want to be tied down to a three-day cooling off period.

Senate Bill No. 36 was discussed. Sen. Devine, sponsor, gave a brief explanation of the bill. He said if the customers could come into the plant and we could offer this type of thing it would be great. He said that some people have fears with the bill. The bill states that one may build the room, it does not require it. By Federal Law, one cannot sell any beer in this room.

Mr. Phil Strope expressed his support in the bill.

Mr. Elton M. Andrew, Mr. Al Dougherty, Mr. Bert Olson, and Mr. Carl Rembe expressed their opposition to the bill (testimonies attached). Mr. Olson stated that the Montana Beer Wholesalers have a good thing going for them. The tavern owners are finally beginning to speak to them. This would ruin it all. Mr. Bob Zucconi also spoke as a opponent.

Sen. Devine stated in closing that there would be no problem with these things. It cannot be sold to the public. The only people involved are those with a licensed account.

Senate Bill No. 107 was discussed. Sen. Regan, sponsor, stated that in the old act a license was required for liquor and beer. The total revenue for the State was $1,000. Under the old act, a first class city could tax $500.

Mr. Tom Hall expressed his support in the bill and said he would answer any questions.

Mr. Phil Strope and Mr. Curtis Lees expressed their opposition in the bill.

Sen. Regan, in closing, said that it was true that the floater license was killed, but that she saw the floater license was not acceptable to the tavern owners anyway. In terms of the revenue, the intention was to restore the revenue which was lost in the cities due to an oversight.

Senate Bill No. 223 was discussed. Sen. Devine, sponsor, said it was designed to facilities. He gave an explanation of the title and then introduced Mr. Ross Cannon.

Mr. Ross Cannon expressed his support in the bill (testimony attached).

Mr. Steve Gross encouraged the passage of this bill in that it gives the Board of Investments more flexibility (testimony attached).

Mr. Bob Pendington and Mr. Harold Pitts expressed their support.

Mr. Jim Howeth and Mr. John Cadby also expressed their support in the measure.

There were no opponents or questions.

The committee then went into executive session.

Rep. Ellison moved that Senate Bill No. 218 BE CONCURRED IN. The motion carried unanimously.

Chairman Vincent asked the committee to defer consideration on Senate Bill No. 223 and Senate Bill No. 107 until a further date. They all agreed.

Rep. Ellison moved to adopt the amendment to Senate Bill No. 73 (attached). The motion carried unanimously. Rep. Kenny moved that Senate Bill No. 73 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

Rep. Metcalf moved that Senate Bill No. 36 BE NOT CONCURRED IN. The motion carried with all members voting yes, with the exception of Reps. Vincent, Burnett, and Harrington who voted no.

The meeting adjourned at 11:30 a.m.

JOHN C. VINCENT, Chairman

SENATE BILL NO. 73

INTRODUCED BY REGAN

BY REQUEST OF THE DEPARTMENT OF BUSINESS REGULATION

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL REVISION OF LAWS RELATING TO A THREE-DAY COOLING OFF PERIOD ON DOOR-TO-DOOR SALES; AMENDING SECTIONS 85-501, AND 85-503 THROUGH 85-506, R.C.M. 1947; REPEALING SECTION 85-502, R.C.M. 1947."

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(a) an attempted sale in which the buyer personally knows the identity of the seller, the name of the business, firm, or organization he represents and the identity or kinds of goods or services offered for sale;

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(c) an attempted sale of a newspaper subscription in which the seller is a minor child engaged in both the delivery and the sale of the newspaper; OR

(D) AN ATTEMPTED SALE OF AN INSURANCE POLICY.

(3) "Personal solicitation sale" means the purchase, lease, or rental of any goods or services following a personal solicitation by the seller or a person acting for him, provided the buyer is required to give consideration in excess of $25 in cash or credit therefor

(4) "Seller" means a lessor, renter, or anyone offering goods or services for consideration, including assignee of a seller.

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If you decide within ~~three~~ 3 days that you want to cancel the sale, tear off and mail the bottom of this card. To cancel, the card must be mailed BY CERTIFIED MAIL within ~~three~~ 3 days after you sign the contract.

(date)

(b) CONTRACT ~~SIGNED~~ CANCELED

I hereby cancel this sale.

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(3) If the seller refuses within the period prescribed by subsection (1) to return the cash down payment or goods tendered as down payment, he shall be liable to the buyer for the entire down payment, and if the buyer is successful in his action therefor the court shall also award him ~~one hundred dollars-[$100]~~ plus reasonable attorneys' fees and costs.

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